

## CONSTRUCTION LICENSING EXECUTIVE



Members are advised that the Board of the Construction Licensing Executive (CLE) has taken the decision to take steps to wind up the organisation. It is expected that the process of closing the organisation will be concluded early in 2015.

The original intention of CLE when it was established in 2002 was that it would support the excellent work carried out by its five trade association members (Building and Engineering Services Association, SELECT, Scottish Building Employers' Federation, Scottish Decorators' Federation and the Scottish & Northern Ireland Plumbing Employers' Federation) through the promotion of the use of licensed contractors and the availability of customer complaints mechanisms and warranty arrangements. While significant progress had been made over this time in building awareness, protecting the public and raising the profile of licensed contractors, this decision has now been taken as it is felt, for a number of reasons that the promotion of a single arrangement across a diverse range of construction activities is proving to be too challenging.

A number of factors have led to this decision including:

- The creation of Approved Certifier of Construction Schemes, approved by the Scottish Government, which have changed the emphasis for some of the CLE trade associations

and their members (specifically SELECT and SNIPEF);

- Challenges in encouraging more members of the trade associations to meet the criteria to join CLE at a time when consumer awareness of the benefits of using a CLE contractor remained relatively low;
- Difficulties in attracting appropriate additional funding from the Scottish Government to support that which had been provided by the member trade associations (partly as a result of the fact that consumer protection remained a reserved matter for the Westminster Government);
- Recognition that a single solution across a wide range of construction activities and a wide customer base was difficult to deliver.

This decision should have minimal impact on individual members of the trade associations who qualified for CLE registration although it is acknowledged that some members have used the CLE logo on their vehicles and stationery. While there is no requirement for these logos to be removed immediately, members are asked to remove them at the first opportunity (such as when stationery is being reprinted or vehicles are being replaced). While Scottish Decorators' Federation is disappointed that the CLE concept has not been more successful, we wish to assure members that this decision should have no impact on other approval schemes operated by us including the Scottish Decorators' Federation's Licensed Decorator Scheme in conjunction with participating member manufacturers and we will continue to promote the use of Scottish Decorators' Federation members to clients and customers.

## **SMITH COMMISSION POINTS TO AN EMPLOYMENT CLAIMS COMEBACK?**

The Smith Commission, which is examining what further legal powers should be transferred to Holyrood, has recommended that the Scottish Parliament should have power over employment tribunals.

As Labour and the SNP have already criticised the fees regime, there is a real possibility of Scotland going it alone in either abolishing tribunal fees altogether or at least substantially overhauling the system.

It is obvious that abolition or reduction of fees would have a significant impact for employers who would undoubtedly face an increase in the number of claims being raised against them by staff.

Since July 2013, employees have been required to pay up to £1,200 in order to raise certain claims and have them heard by a Tribunal. It is well-documented that the impact of the fees regime on the volume of claims being raised has been profound. Prior to fee introduction, Tribunals received an average of 48,000 new claims per quarter but those figures have now greatly diminished. Figures for the quarter from April to June 2014 show an 81% drop in claims from the same period in 2013. Notably, overall there has been an 86% reduction in sex discrimination claims and an 80% fall in equal pay claims.

As HR practitioners will be aware, the ACAS early conciliation process became compulsory from 6 May 2014, having initially been voluntary on its introduction in April. Interestingly, ACAS has recently released statistics on the early conciliation

notifications made between April to September 2014 and the status of cases notified between April and June 2014.

Since April 2014, 37,404 cases have commenced conciliation. Only around 10% of employers and employees have been rejecting the conciliation process and 18% of conciliations have resulted in a COT3 settlement being reached. However, 58% of claims notified to ACAS did not result in a Tribunal claim being lodged, which is largely being attributed to the costs of the Tribunal fees. Significantly only 24% of cases notified to ACAS have progressed to Tribunal.

While these figures may be welcome reading for employers, Unions have expressed concerns that they clearly reflect the barrier to justice that the fees regime poses and acts as a deterrent to claimants.

However the Smith Commission's decision highlights that fee reform north of the border is likely to be on the agenda. Therefore, businesses should be mindful that they may not have seen the back of Tribunal litigation yet. Businesses are likely to see the return of Tribunal claims - and with a vengeance. As a result, employers should be mindful of this when forecasting HR budgets for 2015 and beyond.

## **CONCILIATION AND COMPLAINTS**



In recent months the Technical and Contracts Convenor has been called upon to attempt conciliation with clients who have a complaint against a member contractor

only to discover that no estimate or quote had been provided.

In these instances it is very difficult to reach agreement as there is no paper trail and therefore difficult to prove what work has been and what work should have been carried out.

The National Council discussed and agreed that in future where quotes or estimates have not been provided and a complaint ensues the Federation is unlikely to become involved.

This, of course, does not affect complaints made where estimates or quotes are in place.

The National Council would therefore urge all member contractors to supply quotes or estimates when tendering for a job, large or small.

## **HOLIDAY PAY – 4 DEC 2014**

It was announced this week that there is to be no appeal in the Bear case. That is partly surprising, as each side had arguments to do so. But the unions may have been content with the principles established, and did not want to risk losing that, and the employers may have been content to close off the series of deductions argument, restricting the sums that might be backdated, and not want to risk that. This does not mean however that these issues have been finally resolved. It is very likely that in some other case the employer will decide to challenge the entitlements, or those acting for the workers will try and claim backdated holiday pay for many years.

What is left is an entirely unsatisfactory state of the law, which requires government intervention. Changing the Working Time Regulations to provide

proper guidance on the many points that are at present unclear is needed more than ever before. The government has an interest in doing so, as if workers cannot make claims under the Regulations, they may be able to sue the government directly for not implementing the Directive adequately.

## Monthly Bulletin of Indices

| YEAR | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEPT | OCT  | NOV  | DEC  |
|------|-----|-----|-----|-----|-----|-----|-----|-----|------|------|------|------|
| 2005 | 711 | 713 | 713 | 713 | 713 | 714 | 769 | 769 | 769  | 768  | 769  | 770  |
| 2006 | 769 | 770 | 770 | 769 | 769 | 769 | 793 | 794 | 793  | 793  | 793  | 793  |
| 2007 | 793 | 795 | 795 | 795 | 795 | 795 | 824 | 825 | 825  | 825  | 826  | 826  |
| 2008 | 826 | 827 | 827 | 831 | 831 | 832 | 874 | 874 | 874  | 873  | 873  | 874  |
| 2009 | 874 | 875 | 874 | 874 | 875 | 875 | 875 | 875 | 875  | 876  | 876  | 876  |
| 2010 | 876 | 878 | 878 | 878 | 879 | 879 | 879 | 879 | 879  | 879  | 880  | 880  |
| 2011 | 880 | 885 | 885 | 885 | 888 | 889 | 898 | 898 | 909  | 908  | 908  | 911  |
| 2012 | 910 | 911 | 913 | 912 | 910 | 912 | 912 | 914 | 915  | 915  | 924  | 924  |
| 2013 | 939 | 940 | 943 | 942 | 941 | 938 | 937 | 937 | 938  | 937  | 937  | 937  |
| 2014 | 941 | 941 | 942 | 941 | 941 | 941 | 961 | 961 | 961  | 960* | 960* | 962* |
| 2015 |     |     |     |     |     |     |     |     |      |      |      |      |

\*Provisional